

House Amendment 1430

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1 1 Amend House File 833 as follows:
1 2 #1. Page 12, by inserting after line 12 the
1 3 following:
1 4 <Sec. _____. NEW SECTION. 155B.1 DEFINITIONS.
1 5 As used in this chapter unless the context
1 6 otherwise requires:
1 7 1. "Commissioner" means the commissioner of
1 8 insurance.
1 9 2. "Covered entity" means a nonprofit hospital or
1 10 medical services corporation, health insurer, health
1 11 benefit plan, or health maintenance organization; a
1 12 health program administered by the state in the
1 13 capacity of provider of health coverage; or an
1 14 employer, labor union, or other group of persons
1 15 organized in the state that provides health coverage
1 16 to covered individuals who are employed or reside in
1 17 the state. "Covered entity" does not include a self=
1 18 funded plan that is exempt from state regulation
1 19 pursuant to the federal Employee Retirement Income
1 20 Security Act of 1974 (ERISA), as codified at 29 U.S.C.
1 21 } 1001 et seq., a plan issued for coverage for federal
1 22 employees, or a health plan that provides coverage
1 23 only for accidental injury, specified disease,
1 24 hospital indemnity, Medicare supplemental, disability
1 25 income, long-term care, or other limited benefit
1 26 health insurance policies and contracts.
1 27 3. "Covered individual" means a member,
1 28 participant, enrollee, contract holder, policyholder,
1 29 or beneficiary of a covered entity who is provided
1 30 health coverage by the covered entity. "Covered
1 31 individual" includes a dependent or other person
1 32 provided health coverage through a policy, contract,
1 33 or plan for a covered individual.
1 34 4. "Generic drug" means a chemically equivalent
1 35 copy of a brand-name drug with an expired patent.
1 36 5. "Labeler" means an entity or person that
1 37 receives prescription drugs from a manufacturer or
1 38 wholesaler and repackages those drugs for later retail
1 39 sale and that has a labeler code from the federal food
1 40 and drug administration under 21 C.F.R. } 270.201.
1 41 6. "Pharmacy benefits management" means the
1 42 procurement of prescription drugs at a negotiated rate
1 43 for dispensing within this state to covered
1 44 individuals, the administration or management of
1 45 prescription drug benefits provided by a covered
1 46 entity for the benefit of covered individuals, or any
1 47 of the following services provided with regard to the
1 48 administration of the following pharmacy benefits:
1 49 a. Mail service pharmacy.
1 50 b. Claims processing, retail network management,
2 1 or payment of claims to pharmacies for prescription
2 2 drugs dispensed to covered individuals.
2 3 c. Clinical formulary development and management
2 4 services.
2 5 d. Rebate contracting and administration.
2 6 e. Certain patient compliance, therapeutic
2 7 intervention, or generic substitution programs.
2 8 f. Disease management programs involving
2 9 prescription drug utilization.
2 10 7. "Pharmacy benefits manager" means an entity
2 11 that performs pharmacy benefits management services.
2 12 "Pharmacy benefits manager" includes a person or
2 13 entity acting for a pharmacy benefits manager in a
2 14 contractual or employment relationship in the
2 15 performance of pharmacy benefits management services
2 16 for a covered entity. "Pharmacy benefits manager"
2 17 does not include a health insurance carrier or its
2 18 subsidiary when the health insurance carrier or its
2 19 subsidiary is providing pharmacy benefits management
2 20 services to its own insureds; or a public self-funded
2 21 pool or a private single employer self-funded plan
2 22 that provides such benefits or services directly to
2 23 its beneficiaries.
2 24 8. "Prescription drug" means prescription drug as

2 25 defined in section 155A.3.
2 26 9. "Prescription drug order" means a written order
2 27 from a practitioner or an oral order from a
2 28 practitioner or the practitioner's authorized agent
2 29 who communicates the practitioner's instructions for a
2 30 prescription drug or device to be dispensed.
2 31 10. "Proprietary information" means information on
2 32 pricing, costs, revenue, taxes, market share,
2 33 negotiating strategies, customers, or personnel held
2 34 by private entities and used for that private entity's
2 35 business purposes.
2 36 11. "Trade secret" means information, including a
2 37 formula, pattern, compilation, program, device,
2 38 method, technique, or process, that meets all of the
2 39 following conditions:
2 40 a. Derives independent economic value, actual or
2 41 potential, from not being generally known to, and not
2 42 being readily ascertainable by proper means by, other
2 43 persons who can obtain economic value from its
2 44 disclosure or use.
2 45 b. Is the subject of efforts that are reasonable
2 46 under the circumstances to maintain its secrecy.
2 47 Sec. ____ NEW SECTION. 155B.2 PHARMACY BENEFITS
2 48 MANAGER == LICENSE.
2 49 1. A person shall not perform or act as a pharmacy
2 50 benefits manager in this state without obtaining an
3 1 annual license to do business in this state from the
3 2 commissioner under this section.
3 3 2. The commissioner shall adopt rules, pursuant to
3 4 chapter 17A, relating to the issuance of a license
3 5 under this section. The rules shall include but are
3 6 not limited to inclusion of all of the following:
3 7 a. Definition of terms.
3 8 b. Use of prescribed forms.
3 9 c. Reporting requirements.
3 10 d. Enforcement procedures.
3 11 e. Protection of proprietary information and trade
3 12 secrets.
3 13 Sec. ____ NEW SECTION. 155B.3 MANAGER TO PERFORM
3 14 DUTIES IN GOOD FAITH.
3 15 Each pharmacy benefits manager shall perform its
3 16 duties exercising good faith and fair dealing toward
3 17 the covered entity and covered individuals.
3 18 Sec. ____ NEW SECTION. 155B.4 DISCLOSURE OF
3 19 REVENUES RECEIVED FROM PHARMACEUTICAL MANUFACTURER OR
3 20 LABELER UNDER CONTRACT WITH MANAGER == CONTENT ==
3 21 FEES.
3 22 1. A covered entity may request that any pharmacy
3 23 benefits manager with which it has a pharmacy benefits
3 24 management services contract disclose to the covered
3 25 entity, the amount of all rebate revenues and the
3 26 nature, type, and amounts of all other revenues that
3 27 the pharmacy benefits manager receives from each
3 28 pharmaceutical manufacturer or labeler with whom the
3 29 pharmacy benefits manager has a contract. The
3 30 pharmacy benefits manager shall disclose all of the
3 31 following in writing:
3 32 a. The aggregate amount and, for a list of drugs
3 33 to be specified in the contract, the specific amount,
3 34 of all rebates and other retrospective utilization
3 35 discounts received by the pharmacy benefits manager,
3 36 directly or indirectly, from each pharmaceutical
3 37 manufacturer or labeler that is earned in connection
3 38 with the dispensing of prescription drugs to covered
3 39 individuals of the health benefit plans issued by the
3 40 covered entity or for which the covered entity is the
3 41 designated administrator.
3 42 b. The nature, type, and amount of all other
3 43 revenue received by the pharmacy benefits manager
3 44 directly or indirectly from each pharmaceutical
3 45 manufacturer or labeler for any other products or
3 46 services provided to the pharmaceutical manufacturer
3 47 or labeler by the pharmacy benefits manager with
3 48 respect to programs that the covered entity offers or
3 49 provides to its enrollees.
3 50 c. Any prescription drug utilization information
4 1 requested by the covered entity relating to covered
4 2 individuals.
4 3 2. A pharmacy benefits manager shall provide the
4 4 information requested by the covered entity for such
4 5 disclosure within thirty days of receipt of the

4 6 request. If requested, the information shall be
4 7 provided no less than once each year. The contract
4 8 entered into between the pharmacy benefits manager and
4 9 the covered entity shall specify any fees to be
4 10 charged for drug utilization reports requested by the
4 11 covered entity.

4 12 Sec. _____. NEW SECTION. 155B.5 PERMISSION OF
4 13 ENTITY REQUIRED TO CONTACT COVERED INDIVIDUAL ==
4 14 EXCEPTION.

4 15 A pharmacy benefits manager, unless authorized
4 16 pursuant to the terms of its contract with a covered
4 17 entity, shall not contact any covered individual
4 18 without the express written permission of the covered
4 19 entity.

4 20 Sec. _____. NEW SECTION. 155B.6 CONFIDENTIALITY OF
4 21 INFORMATION == INJUNCTION == DAMAGES.

4 22 1. With the exception of utilization information,
4 23 a covered entity shall maintain any information
4 24 disclosed in response to a request pursuant to section
4 25 155B.4 as confidential and proprietary information,
4 26 and shall not use such information for any other
4 27 purpose or disclose such information to any other
4 28 person except as provided in this chapter or in the
4 29 pharmacy benefits management services contract between
4 30 the parties.

4 31 2. A covered entity that discloses information in
4 32 violation of this section is subject to an action for
4 33 injunctive relief and is liable for any damages which
4 34 are the direct and proximate result of such
4 35 disclosure.

4 36 3. This section does not prohibit a covered entity
4 37 from disclosing confidential or proprietary
4 38 information to the commissioner, upon request. Any
4 39 such information obtained by the commissioner is
4 40 confidential and privileged and is not open to public
4 41 inspection or disclosure.

4 42 Sec. _____. NEW SECTION. 155B.7 AUDITS OF
4 43 MANAGER'S RECORDS.

4 44 A covered entity may have the pharmacy benefits
4 45 manager's records related to the rebates or other
4 46 information described in section 155B.4 audited, to
4 47 the extent the information relates directly or
4 48 indirectly to such covered entity's contract, in
4 49 accordance with the terms of the pharmacy benefits
4 50 management services contract between the parties.
5 1 However, if the parties have not expressly provided
5 2 for audit rights and the pharmacy benefits manager has
5 3 advised the covered entity that other reasonable
5 4 options are available and subject to negotiation, the
5 5 covered entity may have such records audited as
5 6 follows:

5 7 1. An audit may be conducted no more frequently
5 8 than once in each twelve-month period upon not less
5 9 than thirty business days' written notice to the
5 10 pharmacy benefits manager.

5 11 2. The covered entity may select an independent
5 12 firm to conduct the audit, and the independent firm
5 13 shall sign a confidentiality agreement with the
5 14 covered entity and the pharmacy benefits manager
5 15 ensuring that all information obtained during the
5 16 audit will be treated as confidential. The firm may
5 17 not use, disclose, or otherwise reveal any such
5 18 information in any manner or form to any person or
5 19 entity except as otherwise permitted under the
5 20 confidentiality agreement. The covered entity shall
5 21 treat all information obtained as a result of the
5 22 audit as confidential, and may not use or disclose
5 23 such information except as may be otherwise permitted
5 24 under the terms of the contract between the covered
5 25 entity and the pharmacy benefits manager or if ordered
5 26 by a court of competent jurisdiction for good cause
5 27 shown.

5 28 3. Any audit shall be conducted at the pharmacy
5 29 benefits manager's office where such records are
5 30 located, during normal business hours, without undue
5 31 interference with the pharmacy benefits manager's
5 32 business activities, and in accordance with reasonable
5 33 audit procedures.

5 34 Sec. _____. NEW SECTION. 155B.8 DISPENSING OF
5 35 SUBSTITUTE PRESCRIPTION DRUG FOR PRESCRIBED DRUG.

5 36 1. With regard to the dispensing of a substitute

5 37 prescription drug for a prescribed drug to a covered
5 38 individual, when the pharmacy benefits manager
5 39 requests a substitution, the following provisions
5 40 shall apply:
5 41 a. The pharmacy benefits manager may request the
5 42 substitution of a lower-priced generic and
5 43 therapeutically equivalent drug for a higher-priced
5 44 prescribed drug.
5 45 b. With regard to substitutions in which the
5 46 substitute drug's net cost is more for the covered
5 47 individual or the covered entity than the prescribed
5 48 drug, the substitution shall be made only for medical
5 49 reasons that benefit the covered individual.
5 50 2. If a substitution is being requested pursuant
6 1 to this section, the pharmacy benefits manager shall
6 2 obtain the approval of the prescribing health
6 3 professional prior to the substitution.
6 4 3. A pharmacy benefits manager shall not
6 5 substitute an equivalent drug product contrary to a
6 6 prescription drug order that prohibits a substitution.
6 7 Sec. _____. NEW SECTION. 155B.9 CIVIL ACTION ==
6 8 ENFORCEMENT OF CHAPTER == DAMAGES.
6 9 A covered entity may bring a civil action to
6 10 enforce the provisions of this chapter or to seek
6 11 civil damages for the violation of the provisions of
6 12 this chapter.
6 13 Sec. _____. NEW SECTION. 155B.10 APPLICATION OF
6 14 CHAPTER TO CERTAIN CONTRACTS.
6 15 The provisions of this chapter apply only to
6 16 pharmacy benefits management services contracts
6 17 entered into or renewed on or after July 1, 2005.>
6 18 #2. Title page, line 1, by inserting after the
6 19 word <pharmacy,> the following: <relating to the
6 20 regulation of pharmacy benefits managers, providing
6 21 civil relief,>.
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6 25 _____
6 25 BELL of Jasper
6 26 HF 833.501 81
6 27 rn/pj/114